

218A.415 Procedure for seizure of property.

- (1) Personal property subject to forfeiture under this chapter may be seized by any law enforcement agency upon process issued by any judge that is empowered to issue a warrant of arrest or search warrant and in whose jurisdiction the property is located. Seizure of personal property without process may be made if:
 - (a) The seizure is incident to an arrest or a search under a search warrant;
 - (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;
 - (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
 - (d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture pursuant to this chapter.
- (2) Property taken or detained under this section shall not be subject to replevin, but shall be deemed to be in the custody of the law enforcement agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the law enforcement agency may:
 - (a) Remove the property to a place designated by it; or
 - (b) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.
- (3) Real property subject to forfeiture may be seized only pursuant to final judgment and order of forfeiture or upon order of the court having jurisdiction over the property. The order may be obtained pursuant to this subsection upon application of the Commonwealth.
 - (a) Upon receipt of the application, the court shall immediately enter an order setting a date for hearing on the matter no fewer than five (5) days nor more than ten (10) days after the filing of the application. At the hearing:
 1. The court shall take evidence on the issues of whether the property named in the application is forfeit and seizure is necessary to preserve the property pending final judgment.
 2. The Commonwealth shall have the initial burden of showing the existence of probable cause for forfeiture of the property and the necessity of seizure. On the showing by the Commonwealth, the respondent shall have the burden of showing by a preponderance of the evidence that the property is not subject to forfeiture.
 3. Evidence at the seizure hearing may not be suppressed on the ground that its acquisition by search or seizure violated constitutional protections applicable in criminal cases relating to unreasonable searches or seizures.
 4. If the court makes a determination in favor of the Commonwealth, it shall enter an order authorizing the seizure of the property.
 5. The court may, in its discretion, permit the owner of the property to post security equal to the value of the property in lieu of seizure.

- (b) A temporary seizure order pursuant to this section may be entered on application without notice or an opportunity for a hearing if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture and the need to preserve the availability of property through immediate seizure outweighs the hardship that an immediate seizure may cause the owner. The temporary order shall expire ten (10) days after the date on which it is entered or at the time of the hearing provided for in paragraph (a) of this subsection.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 445, sec. 2, effective July 13, 1990. --
Created 1984 Ky. Acts ch. 101, sec. 2, effective July 13, 1984.